IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2010

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.No.2194 of 2004
and
C.M.P.No.9130 of 2004

Pitchai ..Appellant/Claimant

vs.

1. Mrs.Riajunnissa

2. M/s. United India Insurance
Company Limited,
Branch Office II,
Puthur, Trichy - 17. ..Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 28.11.2003 made in M.C.O.P.No.44 of 2002 on the file of the learned Motor Accidents Claims Tribunal and District Judge, Perambalur.

For Appellant : Mr. Jeyandrakrishnan
For Respondents : No Appearance

JUDGMENT

The Appeal has been preferred by the claimant aggrieved by the quantum awarded by the Tribunal.

2. The facts of the case are as follows:-

The appellant sustained injuries in an accident that took place on 14.09.2001 when the van came in the opposite direction driven by its driver in a rash and negligent manner and dashed against the appellant who was walking on the side of the road. The appellant sustained multiple and grievous injuries all over his body and on his left and right leg, below knee lacerated and the left leg shortened. The further case of the claimant is that he was admitted into the Government Hospital on 14.09.2001 and discharged on 22.12.2001. He further contended that he spent about Rs.70,000/- for Medical Expenses and he was earning about Rs.4500/- per month as an agricultural worker. He was aged about 35 years at the time of the accident. For the injuries caused to him the appellant made a claim

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

for Rs.4,00,000/-. The said claim petition was resisted by the second respondent Insurance Company. On appreciation of pleading and evidence the tribunal found that the accident took place because of rash and negligent driving of the van driver and awarded a sum of Rs.75,000/-. Aggrieved by the quantum, the claimant is before this Court by way of this Appeal.

3. The learned counsel for the appellant submitted that the accident was caused because of the rash and negligent driving of the van driver. The claimant also proved that the injuries caused to him were grievous in nature and the injuries affect the normal life and also caused resultant loss in earning power. The learned counsel further submitted that for 54% disability, only a sum of Rs.50,000/- was awarded without considering the loss of income. Therefore, he sought for enhancing the amount.

4. Even though, there was no representation on behalf of the Insurance Company, the pleadings and evidence and the award are considered by this Court and orders are passed on merits.

5. Ex.P1 FIR and Ex.P3 Accident Register would show that the accident occurred because of the rash and negligent driving of the driver of the van. The Tribunal gave a finding in paragraph 5 of the award that it reached the conclusion based on the oral evidence of Pw1 and Ex.P1. Apart from that the Tribunal took note of non-examination of driver of the van by the Insurance Company. In fact no one was examined on the side of the Insurance Company. Therefore, the Tribunal rightly found that the accident occurred because of the rash and negligent driving of the van. Moreover there was no appeal by the Insurance Company against the said finding and therefore it has reached finality and the same is confirmed.

6. As far as the compensation is concerned, the Tribunal has to consider, the nature of injuries caused to the claimant, age of the claimant and the avocation of the claimant. In this case Pw2 was examined to prove the injuries caused to the claimant. Ex.P2 wound certificate speaks about the said injuries which were discussed in paragraph 9 & 10 of the award and the same is extracted as follows:-

> " 9. The Wound Certificate is marked as Ex.P.2. In Ex.P.2 the doctor noticed the following injuries:
>
> 1. A lacerated injury 20 x 5 x 2 cm over left leg through the broken bone seen with loss of shin.
>
> 2. A lacerated injury 10 x 2 x 1 cm over left knee joint,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. An abrasion 10 x 5 cm over left thigh.

out of three injuries, injury No.1 is grievous in nature.

10. P.W.2 Dr.Saravanan, deposed that on 30.10.2003, he examined the petitioner to assess the disability. Two bones in the left leg were fractured into three pieces and there was no bone for three inches in the Tipiya bone. The left leg is shortening by 3 cm.

Further skin grafting was also done to the petitioner. New movement is restricted by 50 decree. He assessed the disability at 54%. Disability certificate is marked as Ex.P.5. X-Ray is marked as Ex.P.6."

7. Admittedly, as stated above there was fracture of bones and shortening of leg and restriction of movement of the leg by 50 decree. The disability was proved to be 50%. The above after-effects of the accident would have telling effect on the normal life of the claimant and his earning would also get reduced. Therefore, this Court applies second schedule of the Motor Vehicles Act to calculate the compensation. The age of the claimant was 35 at the time of the accident. Since there is no evidence available to prove the monthly income of the claimant, this Court adopts the notional income. As per the second schedule notional income is Rs.15,000/- per year. The said second schedule was introduced with effect from 14.11.1994. Whereas the accident occurred on 14.09.2001 and therefore the same amount cannot be taken us notional income as stated in the second schedule, as there has been increase in earning power, inflation and cost of living. Hence, this Court fixes the annual income at the rate of Rs.25,000/- per annum. After deducting 1/3rd amount to personal expenses, the monthly loss of income would be Rs.25,000-Rs.25000x2/3x54/100x16=1,60,000.00. It has been held by the Division Bench of this Court in United India Insurance Company Limited Vs. Veluchamy and another reported in 2005 ACJ 1483 that second schedule can be applied by taking into account the injuries caused, based on the facts of the case. The facts of the present case warrants application of second schedule and therefore, the aforesaid compensation of Rs.1,60,000.00 is awarded by applying the second schedule as loss of income.

8. As this Court awards the amount of Rs.1,60,000.00/- as loss of income based on second schedule, the amount of Rs.50,000/- awarded towards disability is deleted. Though the petitioner claimed some amount to Medical Expenses, the same was rightly rejected by the Tribunal for not filing medical bills to prove the same. The Tribunal awarded a sum of Rs.15,000/- for pain and suffering and the same is confirmed. A sum of Rs.5000/- awarded for medical expenses

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

and a sum of Rs.5,000/- awarded for loss of earning are also confirmed.

9. Accordingly, the appeal is partly allowed and the award is modified as follows:-

1. Loss of Income	-	Rs. 160000.00
2. Pain and suffering	-	Rs. 15000.00
3. Medical Expenses	-	Rs. 5000.00
4. Loss of earning	-	Rs. 5000.00
Total		Rs. 185000.00

The Tribunal awarded 9% interest. Since, the date of accident is 14.09.2001 the Tribunal rightly awarded 9% interest taking into consideration the bank interest rate. Accordingly, 9% is confirmed. However, there will be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

smn

To

1. The District Judge,
   Motor Vehicles Accidents Claims Tribunal,
   Perambalur.

2. The Section Officer,
   V.R. Section,
   High Court, Madras.

+ 1 c.c. to Mr. J. Jayendrakrishnan, Advocate. S.R.No.1262.

C.M.A.No.2194 of 2004
and
C.M.P.No.9130 of 2004

RB (CO)
GSK 24.02.2010.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/